

■ Sec. 11B-33A. Wage requirements.

(a) *Scope.* Any contract for procurement of services by a County department or office must require the contractor and any subcontractor to comply with the wage requirements of this Section. As used in this Section, "covered employer" refers to any contractor or subcontractor that is subject to this Section.

(b) *Exceptions to coverage.* This Section does not apply to:

(1) a contractor who, at the time a contract is signed:

(A) has received less than \$50,000 from the County in the most recent 12-month period; and

(B) will be entitled to receive less than \$50,000 from the County under that contract in the next 12-month period;

(2) a contract with a public entity;

(3) a contract with a nonprofit organization that has qualified for an exemption from federal income taxes under Section 501(c)(3) of the Internal Revenue Code;

(4) a non-competitive contract awarded under Section 11B-14 if the Chief Administrative Officer finds that the performance of the contract would be significantly impaired if the wage requirements of this Section applied;

(5) a contract for electricity, telephone, cable television, water, sewer, or similar service delivered by a regulated public utility;

(6) a contract for services needed immediately to prevent or respond to an imminent threat to public health or safety;

(7) an employer to the extent that the employer is expressly precluded from complying with this Section by the terms of any federal or state law, contract, or grant;

(8) a bridge contract entered into under Section 11B-42; or

(9) a contract entered into under a cooperative procurement under Section 11B-40.

The Executive by regulation may increase the amount in subsection (b)(1) to reflect increases in the cost of living.

(c) *Solicitation requirements.*

(1) Each bid or proposal to provide services to the County must specify how the contractor and each subcontractor will comply with these wage requirements, and must include sufficient funds to meet these requirements. The Director, for good cause shown, may permit a bidder or proposer to provide this information after the bid or proposal is submitted if:

(A) the information is provided before the time for evaluation of the bid or proposal and no later than contract award;

(B) the original bid or proposal price does not change; and

(C) the Director approves the later submission in writing.

(2) Each bid or proposal to provide services to the County which is submitted by an organization that is exempt from coverage under subsection (b)(3) must specify the wage the organization intends to pay to those employees who will perform direct, measurable work under the contract, and any health insurance the organization intends to provide to those employees. In evaluating the cost of a bid or proposal the County must disregard any additional cost attributable to payment of the wage requirements of this Section by any organization that is exempt from coverage under subsection (b)(3) when compared to a bid or proposal submitted by another organization that is also exempt from coverage under subsection (b)(3).

(3) A contractor must not split or subdivide a contract, pay an employee through a third party, or treat an employee as a subcontractor or independent contractor, to avoid the imposition of any requirement under this Section.

(d) *Health insurance.*

(1) Definitions. As used in this subsection;

Health insurance means insurance coverage that is part of an employer benefit package that pays for medical expenses incurred by an employee and an employee's family either by reimbursing the employee or by paying the care provider directly and provides the minimum essential health benefits required under the Patient Protection and Affordable Care Act, 26 U.S.C. §5000A, as amended.

Maryland Health Benefit Exchange means the public corporation and independent unit of Maryland State government established in Title 31 of the Maryland Insurance Code.

(2) A contractor or subcontractor who does not provide health insurance for an employee who provides services to the County must:

(A) report to the Director the job title and salary for each employee providing services to the County under the contract who does not have health insurance without identifying confidential medical information; and

(B) permit each employee without health insurance to meet with a County representative designated by the Director of Health and Human Services during normal work hours to receive help applying for health insurance on the Maryland Health Benefit Exchange, including any available Federal tax subsidy.

(3) The Director of the Department of Health and Human Services or a designee must assist any employee of a contractor or subcontractor without health insurance who requests help to apply for health insurance on the Maryland Health Benefit Exchange, including any available Federal tax subsidy.

(4) Each contractor must submit a quarterly payroll report to the Chief Administrative Officer for each employee of the contractor or any subcontractor who performed services on the contract that includes:

(A) the wages paid to the employee; and

(B) the employer and the employee share of any health insurance premium provided to the employee.

(5) The Director must retain the quarterly payroll reports submitted by the contractor under paragraph (4) for at least 3 years after the completion of the contract. On or before each September 1, the Director must report to the Executive and the Council the number of employees of a contractor or subcontractor who provided services to the County during the previous fiscal year who had health insurance and the number of employees who did not have health insurance.

(e) *Wage requirement.*

(1) Each covered employer must pay each employee who is not exempt under subsection (f) a gross wage of at least \$10.50 per hour during the time the employee actually provides services to the County. For employees who are not paid an hourly wage, compliance with the wage requirement must be measured by dividing the amount paid to the employee each pay period by the number of hours worked each pay period.

(2) The Chief Administrative Officer must adjust the wage rate required under this subsection, effective July 1 of each year, by the annual average increase, if any, in the Consumer Price Index for all urban consumers for the Washington- Baltimore metropolitan area, or any successor index, for the previous calendar year. The Chief Administrative Officer must calculate the adjustment to the nearest multiple of 5 cents, and must publish the amount of this adjustment not later than March 1 of each year. Each adjustment under this paragraph applies to any contract covered by this Section which:

(A) is in effect when the adjustment takes effect, or

(B) takes effect during the next 12 months.

(3) A covered employer must not make any deduction for any item necessary for an employee to perform the essential job function unless the deduction is permitted by Executive regulation.

(f) *Exceptions to wage requirement.* The wage requirements of this Section do not apply to any employee:

- (1) who performs no measurable work related to any contract with the County;
- (2) who participates in a government-operated or -sponsored program that restricts the earnings of or wages paid to employees to a level below the wage required under this Section; or
- (3) who participates for no longer than 120 days in any calendar year in a government-operated or -sponsored summer youth employment program.

(g) *Wage reporting.*

(1) The Director must insert into each contract subject to this Section a provision that requires a covered employer to submit to the Director a report (on a schedule determined by the Director) showing a summary of the wages paid to its employees, who performed direct, measurable work under the contract, by gender and race.

(2) Each contractor and subcontractor must submit a complete copy of its payroll records for work performed on a contract covered by this Section to the Chief Administrative Officer or a designee within 14 days after the end of each quarter.

(3) The payroll records must contain a statement signed by the contractor or subcontractor certifying that:

- (A) the payroll records are correct; and
- (B) the wage rates paid are not less than those required by this Section.

(4) Each payroll record must include:

- (A) the name, address, and telephone number of the contractor or subcontractor;
- (B) the name and location of the job; and
- (C) each employee's:
 - (i) name;
 - (ii) current home address, unless previously reported;
 - (iii) daily straight time and overtime hours;
 - (iv) total straight time and overtime hours for the payroll period;
 - (v) rate of pay;
 - (vi) fringe benefits by type and amount;
 - (vii) gross wages; and
 - (viii) the employer and the employee share of any health insurance premium provided to the employee.

(5) Each contractor or subcontractor must:

- (A) keep payroll records covering work performed on a contract covered by this Section for not less than 5 years after the work is completed; and
- (B) subject to reasonable notice, permit the Chief Administrative Officer or a designee to inspect the payroll records at any reasonable time and as often as the Chief Administrative Officer deems necessary.

(6) The Chief Administrative Officer or a designee must make payroll records obtained from contractors or subcontractors under this Section available for public inspection during regular business hours for 5 years after the Chief Administrative Officer receives the records, unless disclosure of a record is prohibited under federal or state law.

(7) *Prohibition against retaliation.* Except as provided in paragraph (3), a covered employer must not discharge or in any other manner discriminate or retaliate against an employee, who performed direct, measurable work under the contract, because the employee:

- (A) has inquired about, discussed, or disclosed the wages of the employee or another employee;
- (B) asserts any right under this subsection; or
- (C) files any complaint for violation of this subsection.

(8) The prohibition against retaliation under paragraph (2) does not apply to an employee who has access to wage information of other employees or applicants as part of the employee's essential job functions and discloses the wages of other employees or applicants to individuals who do not otherwise have access to the information, unless the disclosure is in response to:

- (A) a formal complaint or charge;
- (B) in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by a covered employer; or
- (C) is consistent with the contractor's legal duty to furnish information.

(9) The Director may refer a report to the Office of Human Rights for investigation of a possible violation of Chapter 27, Human Rights and Civil Liberties.

(10) On or before December 31, 2019, the Director must submit to the County Executive and the County Council a report on the evaluation of the wage data submitted by contractors and subcontractors under paragraph (1). This report must include:

- (A) the number of reports reviewed;
- (B) the number of reports referred to the Office of Human Rights for investigation;
- (C) the number of probable cause findings by the Office of Human Rights resulting from these reports;
- (D) a list of sanctions imposed upon a contractor for a violation of subsection (g); and
- (E) any other information the Director finds relevant to evaluate the effect of this reporting requirement on wage equity.

(h) *Conflicting requirements.* If any federal, state, or County law or regulation requires payment of a higher wage, that law or regulation controls. If any applicable collective bargaining agreement requires payment of a higher wage, that agreement controls.

(i) *Enforcement.*

(1) The Chief Administrative Officer must require each covered employer to:

- (A) certify that the employer and each subcontractor is aware of and will comply with the applicable wage requirements of this Section;
- (B) keep and submit any records necessary to show compliance; and
- (C) conspicuously post notices informing employees of the requirements of this Section, and send a copy of each such notice to the Chief Administrative Officer's designee.

(2) The Chief Administrative Officer or a designee must perform random or regular audits and investigate any complaint of a violation of this Section. If the Director determines that a provision of this Section has been violated, the Director must issue a written decision, including imposing appropriate sanctions, and may withhold from payment due the contractor, pending a final decision, an amount sufficient to:

- (A) pay each employee of the contractor or subcontractor the full amount of wages due under this Section;
- (B) satisfy a liability of a contractor for liquidated damages as provided in this Section; and

- (C) reimburse the County for the cost of the audit.

(3) An employer must not discharge or otherwise retaliate against an employee for asserting any right under this Section or filing a complaint of violation. Any retaliation is subject to all sanctions for noncompliance with this Section.

(4) The sanctions of Section 11B-33(b) which apply to noncompliance with nondiscrimination requirements apply with equal force and scope to noncompliance with the wage requirements of this Section.

(5) Each contract may specify that liquidated damages for any noncompliance with this Section includes the amount of any unpaid wages, with interest, and that the contractor is jointly

and severally liable for any noncompliance by a subcontractor. In addition, each contract must specify:

(A) that liquidated damages may be imposed on the contractor in the event that a covered employer violates the wage reporting or payroll records reporting requirement in subsection (g), including for providing late or inaccurate payroll records; and

(B) that an aggrieved employee, as a third-party beneficiary, may by civil action enforce the payment of wages due under this Section and recover any unpaid wages with interest, a reasonable attorney's fee, and damages for any retaliation for asserting any right under this Section.

(6) If a contractor or subcontractor fails to submit, or is late in submitting, copies of any payroll record or other report required to be submitted under this Section, the County may deem invoices unacceptable until the contractor or subcontractor provides the required records or reports, and may postpone processing payments due under the contract or under an agreement to finance the contract.

(j) *Report.*

The Chief Administrative Officer must report annually to the Council and Executive on the operation of and compliance with this Section. In addition, the report filed under Section 11B-61

(a) each year must compute the number of contracts and subcontracts with minority-owned businesses that are subject to the requirements of this Section, and how that number has changed since the year before those requirements took effect. (2002 L.M.C., ch. 17, § 1; 2010 L.M.C., ch. 7, § 1; 2015 L.M.C., ch. 18, § 1; 2015 L.M.C., ch. 19, § 1; 2016 L.M.C., ch. 1, § 1.)

Editor's note—2015 L.M.C., ch. 19, § 2, states: Transition. This Act applies to a contract awarded after October 1, 2015, but does not apply to an amendment or extension of a contract originally awarded before October 1, 2015.

2015 L.M.C., ch. 18, § 2, states: Effective date. The amendments to Section 11B-33A, inserted in Section 1 of this Act:

(a) apply to any contract in effect on or after the date this Act takes effect; and

(b) are not effective after July 1, 2017.

2002 L.M.C., ch. 17, § 2, states: Section 11B-33A, inserted by Section 1 of this Act, applies, effective July 1, 2003, to any contract for which the County government released a solicitation on or after January 1, 2003, and to any renewal or extension of a previously-effective contract which takes effect on or after July 1, 2003, and incorporates any material alteration to a provision of that contract. The Chief Administrative Officer must offer to renegotiate any multi-year contract which took effect before July 1, 2003, if the contractor agrees to apply the wage requirements of Section 11B-33A to employees who provide services under that contract. The first annual wage adjustment required by Section 11B-33A(e)(2) must take effect on July 1, 2004.